

CHAPTER 1
TAX CREDIT FOR INVESTMENTS IN VENTURE CAPITAL FUNDS

123—3.1(15E) Tax credit for investments in venture capital funds. For tax years beginning on or after January 1, 2002, a taxpayer may claim a tax credit against the taxpayer's tax liability for personal net income tax imposed under Iowa Code chapter 422, division II, business tax on corporations imposed under Iowa Code chapter 422, division III, taxation of financial institutions imposed under Iowa Code chapter 422, division V, insurance companies tax imposed under Iowa Code chapter 432 or taxation of credit unions imposed under Iowa Code section 533.24, for a portion of a taxpayer's equity investment in a venture capital fund. Natural persons and various types of legal entities, including but not limited to corporations, limited liability companies, partnerships (both general and limited), trusts and estates, shall be eligible for the investment tax credit provided for an investment in a venture capital fund. If the taxpayer that is entitled to an investment tax credit for an investment in a venture capital fund is a pass-through entity electing to have its income taxed directly to its individual owners, such as a partnership, limited liability company, S corporation, estate or trust, the pass-through entity shall allocate the allowable credit to each of the individual owners of the entity on the basis of each owner's pro rata share of the earnings of the entity, and the individual owners may claim their respective credits on their individual income tax returns. A taxpayer shall not claim an investment tax credit for an investment in a venture capital fund if the taxpayer is a venture capital investment fund allocation manager for the Iowa fund of funds described in Iowa Code section 15E.65 or an investor that receives a tax credit for an investment in a community-based seed capital fund as described in Iowa Code section 15E.45. The taxpayer's equity investment must be made in the form of cash to purchase equity in a venture capital fund.

123—3.2(15E) Definitions. The following definitions are applicable to this chapter:

"Board" means the Iowa capital investment board created under Iowa Code section 15E.63.

"Physical presence in Iowa" includes, but is not limited to, having an office or other business location in Iowa, or having employees or representatives present in Iowa on a regular and continuing basis.

"Venture capital fund" means a private seed and venture capital partnership or entity fund that has been certified by the Iowa capital investment board.

123—3.3(15E) Verification of venture capital funds. A venture capital fund shall provide to the board information as a prerequisite to the board's issuance of any investment tax credits to investors in such venture capital funds. The venture capital fund must provide this information within 120 days from the first date on which the equity investments qualifying for the investment tax credit have been made (or, for investments made during the 2002 calendar year, by the later of 120 days from the first date on which the investments have been made or March 31, 2003).

Application forms setting forth the information required to verify the eligibility of a venture capital fund may be obtained by contacting the Iowa capital investment board at the Iowa Department of Revenue and Finance, 1305 E. Walnut Street, Hoover State Office Building, Des Moines, Iowa 50319. The telephone number is (515)281-3204. Applications shall be submitted to the board in care of the department of revenue and finance at the address identified above.

The information required by the board to verify an eligible venture capital fund is set forth below:

1. A copy of the fund's certificate of limited partnership, limited partnership agreement, articles of organization or operating agreement certified by the chief executive officer of the venture capital fund.
2. A signed statement, from an officer, director, manager, member or general partner of the fund, stating that the fund maintains a physical presence within Iowa.

3. A signed statement, from an officer, director, manager, member or general partner of the fund, stating that a commitment has been made by the fund to consider equity investments in businesses located within Iowa.

Upon the board's receipt of the information and documentation necessary to demonstrate satisfaction of the criteria set forth herein, the board shall, within a reasonable period of time, determine whether a certification will be issued for the venture capital fund. If the board certifies the venture capital fund, the board shall register the fund on a registry that shall be maintained by the board. The board shall use such registry to authorize the issuance of further investment tax credits to taxpayers who make equity investments in the venture capital funds registered with the board. The board shall issue written notification to the venture capital fund that such fund has been registered as a venture capital fund with the board for the purpose of issuing investment tax credits.

123—3.4(15E) Application for the investment tax credit. Upon verification and registration by the board of a venture capital fund, a taxpayer who desires to receive an investment tax credit for an equity investment in a venture capital fund must submit an application to the board for approval and provide such other information and documentation as may be requested by the board. Application forms for the investment tax credit may be obtained by contacting the Iowa capital investment board at the Iowa Department of Revenue and Finance, 1305 E. Walnut Street, Hoover State Office Building, Des Moines, Iowa 50319. Applications shall be submitted to the board in care of the department of revenue and finance at the address identified above. Each application shall be date- and time-stamped by the department of revenue and finance in the order in which such applications are received. Applications for the investment tax credit shall be accepted by the board until March 31 of the year following the calendar year in which the taxpayer's equity investment is made.

123—3.5(15E) Issuance and distribution of investment tax credits. Upon verification and registration by the board of a venture capital fund, the board shall issue a tax credit certificate to the applicant. The tax credit certificate shall be in a form approved by the board and shall contain the taxpayer's name, address, and tax identification number, the amount of credit, the name of the venture capital fund, the year in which the credit may be redeemed and any other information that may be required by the department of revenue and finance. In addition, the tax credit certificate shall contain the following statement:

The Iowa Capital Investment Board has not recommended or approved this investment or passed on the merits or risks of such investment. Investors should rely solely on their own investigation and analysis and seek investment, financial, legal and tax advice before making their own decision regarding investment in this enterprise.

A tax credit is equal to 6 percent of the taxpayer's equity investment in the venture capital fund. The aggregate amount of tax credits issued pursuant to this rule shall not exceed a total of \$5 million. The applicants shall receive tax credit certificates on a first-come, first-served basis, until the amount of credits authorized for issuance has been exhausted.

123—3.6(15E) Claiming the tax credits. A taxpayer shall not claim the tax credit prior to the third tax year following the tax year in which the investment is made. An investment shall be deemed to have been made on the same date as the date of acquisition of the equity interest as determined by the Internal Revenue Code. A tax credit shall not be redeemed during any tax year beginning prior to January 1, 2005. A tax credit shall not be transferable to any other taxpayer. Any tax credit in excess of the taxpayer's liability for the tax year may be credited to the tax liability for the following five years or until depleted, whichever is earlier. A tax credit shall not be carried back to a tax year prior to the tax year in which the taxpayer redeems the tax credit.

123—3.7(15E) Notification to the department of revenue and finance. Upon the issuance and distribution of investment tax credits for each tax year, the board shall notify the department of revenue and finance by providing copies of the tax credit certificates issued for such tax year to the department of revenue and finance. Such notification shall also include, but not be limited to, the aggregate number and amount of tax credits issued for such tax year.

123—3.8(15E) Additional information. The board retains the authority to request additional information and documentation from the venture capital fund regarding the investments made by the venture capital fund in businesses located in Iowa.

These rules are intended to implement Iowa Code chapter 15E.

[Filed 1/17/03, Notice 12/11/02—published 2/5/03, effective 3/12/03]